



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96333; File No. SR-NYSEARCA-2022-77]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend 6.41P-O

November 16, 2022.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on November 9, 2022, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend 6.41P-O (Price Reasonability Checks - Orders and Quotes). The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 6.41P-O (Price Reasonability Checks - Orders and Quotes) to modify the application of certain risk checks on Pillar as set forth below.

The Exchange recently revised Rule 6.41P-O to clarify the application of the “Price Reasonability Checks” to orders and quotes, which include the Arbitrage Check and the Intrinsic Value Check (collectively, the “Checks”), when such Checks rely on last sale information.⁴ In particular, the Exchange modified the rule to reflect Pillar functionality that excluded from the Checks those transactions (such as odd lot transactions) that are not “last-sale eligible.” However, the Exchange has determined to modify the operation of the Checks under Pillar such that they apply to trades in underlying securities of any size, including odd lots.⁵ The Exchange believes that applying the Checks based on a broader range of underlying transactions -- both round lots and odd lots -- would enhance the efficacy of the Checks as this proposed functionality would provide a better representation of the trade prices occurring in the underlying market.⁶ As such, the Exchange believes that the proposed functionality would continue to provide price protection to OTP Holders and OTP Firms.

As proposed, the Arbitrage Check would reject or cancel (if resting) a buy order or quote

⁴ See Rule 6.41P-O(b) and (c) (describing the Arbitrage Check and the Intrinsic Value Check, respectively). See Securities Exchange Act Release No. 95088 (June 13, 2022), 87FR 36556 (June 17, 2022) (SR-NYSEArca-2022-34) (immediately effective filing to modify Rule 6.41P-O(b) and (c) to use as a basis for the Check “the price of the last - sale eligible trade” of the underlying security, rather than the “last sale price” of the underlying security).

⁵ The Exchange notes, prior to migrating to Pillar, the Exchange included odd lots in its application of the Arbitrage Check and Intrinsic Value Check, per Rules 6.60-O (Price Protection - Orders) and 6.61-O (Price Protection - Quotes). See also NYSE American LLC (“NYSE American”) Rules 967NY (c)(1), (2) and 967.1NY (regarding the application of Arbitrage Checks and Intrinsic Value Checks to orders and quotes, respectively).

⁶ The Exchange notes that trades in higher-priced underlying securities tend to be odd lots, which highlights the importance of capturing such trades in the Checks.

for call options if the price of the order or quote is equal to or greater than the price of the last trade (of any size) of the underlying security on the Primary Market, plus a specified threshold to be determined by the Exchange and announced by Trader Update.⁷ Regarding the Intrinsic Value Check, the Exchange proposes that the Intrinsic Value of a put option would be equal to the strike price minus the price of the last trade (of any size) of the underlying security on the Primary Market” and the Intrinsic Value of a call option would be equal to the price of the last trade (of any size) of the underlying security on the Primary Market minus the strike price.⁸

In addition, the Exchange proposes a conforming change to delete Rule 6.41P-O(a)(3)(iv) as no longer applicable, because the Checks would no longer impose a size/last sale eligible trade condition restriction on the underlying trade.⁹ The Exchange believes this proposed rule change would align with the proposed functionality and add clarity and transparency to Exchange rules making them easier to navigate and comprehend.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),¹⁰ in general, and furthers the objectives of Section 6(b)(5),¹¹ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

⁷ See Rule 6.41P-O(b)(2).

⁸ See Rule 6.41P-O(c)(1), (2).

⁹ See proposed Rule 6.41P-O(a)(3). The Exchange also proposes to make non-substantive conforming changes to this paragraph, including by renumbering, which changes add clarity, transparency, and internal consistency to Exchange rules. See id.

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

The Exchange believes that the proposed rule change to modify the operation of the Checks to apply to transactions of any size -- whether odd lots or round lots -- would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system and protect investors because the Checks would be applied to a broader spectrum of trade prices in underlying securities, which would enhance the efficacy of the Checks to the benefit of investors and the investing public. As such, the Exchange believes that the proposed functionality would continue to provide price protection to OTP Holders and OTP Firms.

The proposed non-substantive conforming changes would add clarity, transparency, and internal consistency to Exchange rules making them easier to comprehend.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not intended to address competition, but rather to modify the operation of the Exchange's Checks by accounting for trade prices in underlying transactions of any size (both odd lots and round lots), which would impact (and benefit) all similarly-situated market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³ Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(6).

burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁴ and Rule 19b-4(f)(6)(iii) thereunder.¹⁵

A proposed rule change filed under Rule 19b-4(f)(6)¹⁶ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁷ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may take effect immediately. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it will provide enhanced price protection checks to market participants without delay. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁸

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

¹⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁵ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

¹⁸ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Commission shall institute proceedings under Section 19(b)(2)(B)¹⁹ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEARCA-2022-77 on the subject line.

Paper comments:

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEARCA-2022-77. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m.

¹⁹ 15 U.S.C. 78s(b)(2)(B).

Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEARCA-2022-77 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Sherry R. Haywood,

Assistant Secretary.

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²⁰ 17 CFR 200.30-3(a)(12).